

Notice of Allowability	Application No.	Applicant(s)	
	09/943,286	NUNOMURA, KIYOTADA	
	Examiner	Art Unit	
	Teresa E Strzelecka	1637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to an amendment filed November 30, 2004.
2. ☒ The allowed claim(s) is/are 105,106,108-110 and 116.
3. ☒ The drawings filed on 30 August 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>1/25/05, 1/26/05</u>. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____. |
|---|--|

**JEFFREY FREDMAN
PRIMARY EXAMINER**

1/24/05

EXAMINER'S AMENDMENT

1. This office action is in response to an amendment filed November 30, 2004. Claims 105, 106, 108-110 and 116 were previously pending. Applicant amended claim 105.
2. Applicants' amendment overcame the following rejections: rejection of claims 105, 106, 109, 110 and 116 under 35 U.S.C. 102(b) as anticipated by Rosenstrauss et al. and the rejection of claim 108 under 35 U.S.C. 103(a) over Rosenstrauss et al. and Kricka. However, Applicant's amendment of claim 105 introduced new matter to the claim. Applicant's attorney, Michel Gilly, was contacted with a suggestion of how to overcome the new matter and put the claims in condition for allowance (see enclosed interview summaries).
3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael Gilly on January 26, 2005.

The application has been amended as follows:

- In claim 105, line 23, insert ---and to reduce a coefficient of variability--- after "production".
- In claim 105, lines 23 and 24, delete ---in said polynucleotide amplification reaction to less than 44% of the amount--- after "amplicon" and substitute ---relative to analyte amplicon--- therefor.

Reasons for Allowance

Art Unit: 1637

4. The following is an examiner's statement of reasons for allowance: Applicant's invention is a method of reducing the amount and variability of an analyte amplicon in an amplification reaction by adding to the reaction a pseudo target in excess of the analyte to be amplified and amplification of the analyte and the pseudo target using the same set of primers. The closest prior art reference, Rosenstrauss et al., teach addition of an internal control (a pseudo target) to an amplification reaction, but do not teach the amount of the internal control being in excess of the analyte or reducing the amount of produced analyte or the coefficient of variability of the amplified analyte by using the internal control.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa E Strzelecka whose telephone number is (571) 272-0789. The examiner can normally be reached on M-F (8:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (571) 272-0782. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TS
January 26, 2005


JEFFREY FREDMAN
PRIMARY EXAMINER
1/24/05